

REMARKS

This is a full and timely response to the outstanding Final Office Action mailed February 11, 2004. Upon entry of this response, claims 1-14 and 16-51 remain pending in the present application.

In the Office Action, pending claims 1-14 and 16-51 have been preliminarily rejected for obviousness under 35 U.S.C. § 103(a). The Applicants traverse all of the rejections of the Final Office Action. Reconsideration and allowance of the subject application and presently pending claims 1-14 and 16-51 is respectfully requested.

I. Response To Claim Rejections Based On Obviousness

In the Office Action, claims 1-14 and 16-51 have been preliminarily rejected under 35 U.S.C. §103(a) for obviousness. Claims 1-4, 9-12, 14, 16-20, 27-33, 37, 39, 40, 47, and 48 have been rejected as being unpatentable over U.S. Patent No. 5,895,365 to Tomlinson (hereinafter "Tomlinson") in view of U.S. Patent No. 5,503,457 to Rosado (hereinafter "Rosado"). Claims 5, 7, 8, 34, 36, 38, and 51 have been rejected as being unpatentable over Tomlinson in view of Rosado and further in view of U.S. Patent No. 5,696,574 to Schwaegerle (herein "Schwaegerle"). Claims 6 and 35 have been rejected as being unpatentable over Tomlinson in view of Rosado and Schwaegerle and further in view of U.S. Patent No. 5,453,586 to Stottman (herein "Stottman"). Claim 13 has been rejected as being unpatentable over Tomlinson in view of Rosado and further in view of U.S. Patent No. 5,429,585 to Liang (herein "Liang"). Claims 21-23 and 41-43 have been rejected as being

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unpatentable over Tomlinson in view of Rosado and further in view of U.S. Patent No. 5,335,962 to Gera (herein "Gera"). Claims 24, 25, 44, 45, 49, and 50 have been rejected as being unpatentable over Tomlinson in view of Rosado and further in view of U.S. Patent No. 5,020,517 to Foster, Jr. et al. (herein "Foster"). Claims 26 and 46 have been rejected as being unpatentable over Tomlinson in view of Rosado and further in view of U.S. Patent No. 5,838,808 to Prosser (herein "Prosser"). Claims 26 and 46 have been rejected as being unpatentable over Tomlinson in view of Rosado and further in view of U.S. Patent No. 5,613,222 to Guenther (herein "Guenther"). It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. See, e.g., In re Dow Chemical, 5 U.S.P.Q. 2d 1529, 1531 (Fed. Cir. 1988), and In re Keller, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981).

The Applicants respectfully submit that it is not the Applicants' burden to prove that no teaching, disclosure, or suggestion exists within the prior art that would lead one of ordinary skill to make the particular combination of elements, as claimed. Instead, the initial burden is upon the Patent Office to establish a prima facie case of obviousness. Such a prima facie showing includes an identification of a proper suggestion or disclosure within the prior art to make the combination. Nevertheless, the Applicants have closely reviewed the references applied by the Office Action and have been unable to identify any teaching, disclosure, or other suggestion contained within these references or elsewhere in the prior art that would lead one of ordinary skill in the art (without the benefit

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of hindsight) to make the combination (both structure and function) as set forth in the claims of the present application.

Therefore, if the Examiner intends to maintain the obviousness rejections, based upon a combination of prior art references, the Applicants respectfully request that the Examiner identify the specific teachings within the prior art that would suggest the desirability or disclosure for the particular combination of elements as claimed.

A. Claim 1

Independent claim 1 reads:

A bed cushion for supporting a person in a sitting position on an upper surface of a bed, comprising:
a back portion comprising a contoured forward surface and a generally planar rear surface, the surfaces separated by a padded interior;
at least one massage motor carried by the back position;
a pair of padded armrests coupled to the back portion; and
a light source for providing light for a user, the light source mounted to the back portion by an arm, wherein the back portion and the armrests have lower surfaces for resting on the upper surface of the bed.

(Emphasis Added)

The Applicants respectfully submit that Tomlinson in view of Rosado, fails to teach, disclose, or suggest at least the above-emphasized element of claim 1.

Specifically, Tomlinson in view of Rosado fails to at least teach, disclose, or suggest a light source mounted to the back portion by an arm. The Examiner suggests on page 3 of the Final Office Action that "it would have been obvious to one

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of ordinary skill in the art at the time the invention was made to rearrange the location of Tomlinson's light source as being mounted to the back portion as taught by Rosado, since the location is a matter of design for art recognized equivalent and ***doing so would place the light in an optimum position that does not interfere with the user's movements and yet still provide good lighting for reading if desired"* (Emphasis Added).** Neither Tomlinson nor Rosado teach that mounting the light in the back of the bed cushion would place the light in an optimum position that does not interfere with the user's movements and yet still provides good lighting for reading if desired. The Applicants believe this teaching, disclosure or suggestion is missing from the Examiner's cited references and respectfully submit that without this teaching, disclosure, or suggestion, at least the above emphasized limitation in claim 1 is nonobvious.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 1 is allowable and allowance is respectfully requested.

B. Claims 2-14, 16-26 and 47

The Applicants respectfully submit that since claims 2-14, 16-26 and 47 depend on independent claim 1, claims 2-14, 16-26 and 47 contain all the limitations of independent claim 1. Since independent claim 1 should be allowed, as argued above, pending dependent claims 2-14, 16-26 and 47 should be allowed as a matter of law for at least this reason. In re Fine, 5 U.S.P.Q. 2d 1596, 1608 (Fed. Cir. 1988).

1. Claim 3

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Claim 3 was rejected as obvious based on Tomlinson in view of Rosado. Claim 3 contains the limitation of a handle coupled to the flexible arm for manipulating the position of the light source. The Examiner has not alleged any reference contains a handle coupled to a flexible arm. As the Examiner has not suggested that the prior art teaches, discloses or suggests coupling a handle to a flexible arm, the Applicants respectfully submit that a prima facie case for obviousness has not been made.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 3 is allowable and allowance is respectfully requested.

2. Claim 4

Claim 4 was rejected as obvious based on Tomlinson in view of Rosado. Claim 4 previously contained the limitation of the cushion (which lacked antecedent basis) formed of materials, which provide vibration attenuation and isolation to protect the filaments. The amended claim 4 claims a mass located between the massage motor and a location on the back portion where the light source is mounted. The Examiner has previously alleged that Tomlinson inherently taught a vibration attenuating and isolating cushion. However, Tomlinson did not teach putting a vibration attenuating and isolating cushion between the massage motor and the location where the light source is mounted. Contrarily, Tomlinson taught steel rods 38 between the back portion and the armrest on which the light is mounted. As steel rods ably translate vibration, Tomlinson does not teach, disclose, or suggest a vibration attenuating and isolating mass between the massage motor and the

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location where the light source is mounted. None of the referenced prior art teaches, discloses or suggests a vibration attenuating and isolating mass between the massage motor and the location where the light source is mounted; therefore, the Applicants respectfully submit that the limitation in claim 4 is nonobvious.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 4 is allowable and allowance is respectfully requested.

3. Claim 20

Claim 20 was rejected as obvious based on Tomlinson in view of Rosado. Claim 20 previously contained the limitation of "the back portion is angularly adjustable relative to the armrests." The limitation was based on the Applicants' bed cushion having the capacity to recline. The Examiner rejected this limitation based on the teaching of Tomlinson's pivotable armrests, which did not enable the bed cushion to recline. Claim 20 is herein amended to "the back portion is reclineably adjustable relative to the armrests." None of the cited references teach a reclineably adjustable bed cushion.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 20 is allowable and allowance is respectfully requested.

4. Claim 21

Claim 21 was rejected as obvious based on Tomlinson in view of Rosado and further in view of Gera. Claim 21 contains the limitation of a

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telephone base station enclosed within the cushion. The Examiner has suggested that Gera teaches a chair having a telephone, which includes a base station and a headset. Gera does not teach, disclose, or suggest a chair having a telephone. Gera teaches a sectional sofa having a storage space, in which items such as a telephone may be stored. Claim 21 is not directed to a storage space. Claim 21 is directed toward a base station enclosed within the cushion. To further clarify Applicants' novelty, Applicants have amended this claim to a base station integral with a cushion. As the Examiner has not cited a reference in the prior art that teaches, discloses or suggests enclosing a base station integral with a cushion, the Applicants respectfully submit that a prima facie case for obviousness has not been made.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 21 is allowable and allowance is respectfully requested.

5. Claim 22

Claim 22 was rejected as obvious based on Tomlinson in view of Rosado and further in view of Gera. Claim 22 contains the limitation of a speaker enclosed within the cushion. The Examiner has suggested that Gera teaches a chair having a telephone, which includes a base station and a headset (speaker). Gera does not teach a chair having a telephone. Gera teaches a sectional sofa having a storage space, in which items such as a telephone may be stored. Claim 22 is not directed to a storage space. Claim 22 is directed toward a speaker enclosed within the cushion. To further clarify

Applicants' novelty, the Applicants have amended this claim to a speaker integral with a cushion. As the Examiner has not cited a reference in the prior art that teaches, discloses or suggests a speaker integral with the cushion, the Applicants respectfully submit that a prima facie case for obviousness has not been made.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 22 is allowable and allowance is respectfully requested.

6. Claim 23

Claim 23 was rejected as obvious based on Tomlinson in view of Rosado and further in view of Gera. Claim 23 contains the limitation of the speaker of claim 22 electrically coupled to a telephone base station. The Examiner has suggested that Gera teaches a chair having a telephone, which includes a base station and a headset (speaker). Gera does not teach a chair having a telephone. Gera teaches a sectional sofa having a storage space, in which items such as a telephone may be stored. Claim 23 is not directed to a storage space. Claim 23 is directed toward a speaker of claim 22 electrically coupled to a telephone base station. As the Examiner has not cited a reference in the prior art that teaches, discloses or suggests a speaker integral with a cushion and electrically coupled to a telephone base station, the Applicants respectfully submit that a prima facie case for obviousness has not been made.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 23 is allowable and allowance is respectfully requested.

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C. Claim 27

Independent claim 27 reads:

A massaging bed rest cushion for supporting a person in a sitting position on an upper surface of a bed, comprising:

a back portion comprising a contoured forward surface and a rear surface, the surfaces separated by a padded interior;

a plurality of massage motors enclosed between the forward and rear surfaces;

a pair of padded armrests coupled to the back portion; and

a light source mounted to the back portion for providing light for a user, wherein the back portion and the armrests have lower surfaces for resting on the upper surface of the bed.

(Emphasis Added)

The Applicants respectfully submit that Tomlinson in view of Rosado, fails to teach, disclose, or suggest at least the above-emphasized element of claim 27.

Specifically, Tomlinson in view of Rosado fails to at least teach, disclose, or suggest a light source mounted to the back portion. The Examiner suggests on page 3 of the Final Office Action that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to rearrange the location of Tomlinson's light source as being mounted to the back portion as taught by Rosado, since the location is a matter of design for art recognized equivalent and ***doing so would place the light in an optimum position that does not interfere with the user's movements and yet still provide good lighting for reading if desired***"

(Emphasis Added). Neither Tomlinson nor Rosado teach that mounting the light in

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the back of the bed cushion would place the light in an optimum position that does not interfere with the user's movements and yet still provides good lighting for reading if desired. The Applicants believe this teaching, disclosure or suggestion is missing from the Examiner's cited references and respectfully submit that without this teaching, disclosure, or suggestion, at least the above emphasized limitation in claim 27 is nonobvious.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 27 is allowable and allowance is respectfully requested.

D. Claims 28-46 and 48

The Applicants respectfully submit that since claims 28-46 and 48 depend on independent claim 27, claims 28-46 and 48 contain all the limitations of independent claim 27. Since independent claim 27 should be allowed, as argued above, pending dependent claims 28-46 and 48 should be allowed as a matter of law for at least this reason. In re Fine, 5 U.S.P.Q. 2d 1596, 1608 (Fed. Cir. 1988).

1. Claim 32

Claim 32 was rejected as obvious based on Tomlinson in view of Rosado. Claim 32 previously contained the limitation of the cushion (which lacked antecedent basis) formed of materials, which provide vibration attenuation and isolation to protect the filaments. The amended claim contains the limitation of a mass located between the massage motor and a location on the back portion where the light source is mounted. The

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Examiner has previously alleged that Tomlinson inherently taught a vibration attenuating and isolating cushion. However, Tomlinson did not teach putting a vibration attenuating and isolating cushion between the massage motor and the location where the light source is mounted. Contrarily, Tomlinson taught steel rods 38 between the back portion and the armrest on which the light is mounted. As steel rods ably translate vibration, Tomlinson does not teach a vibration attenuating and isolating mass between the massage motor and the location where the light source is mounted. None of the referenced prior art teaches, discloses or suggests a vibration attenuating and isolating mass between the massage motor and the location where the light source is mounted; therefore, the Applicants respectfully submit that the limitation in claim 32 is nonobvious.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 32 is allowable and allowance is respectfully requested.

2. Claim 40

Claim 40 was rejected as obvious based on Tomlinson in view of Rosado. Claim 40 previously contained the limitation of "the back portion is angularly adjustable relative to the armrests." The limitation was based on the Applicants' bed cushion having the capacity to recline. The Examiner rejected this limitation based on the teaching of Tomlinson's pivotable armrests, which did not enable the bed cushion to recline. Claim 40 is herein amended to "the back portion is reclineably adjustable relative to the

armrests." None of the cited references teach a reclineably adjustable bed cushion.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 40 is allowable and allowance is respectfully requested.

3. Claim 41

Claim 41 was rejected as obvious based on Tomlinson in view of Rosado and further in view of Gera. Claim 41 contains the limitation of a telephone base station enclosed within the cushion. The Examiner has suggested that Gera teaches a chair having a telephone, which includes a base station and a headset. Gera does not teach a chair having a telephone. Gera teaches a sectional sofa having a storage space, in which items such as a telephone may be stored. Claim 41 is not directed to a storage space. Claim 41 is directed toward a base station enclosed within the cushion. To further clarify Applicants' novelty, Applicants have amended this claim to a base station integral with a cushion. As the Examiner has not cited a reference in the prior art that teaches, discloses or suggests enclosing a base station integral with a cushion, the Applicants respectfully submit that a prima facie case for obviousness has not been made.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 41 is allowable and allowance is respectfully requested.

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4. Claim 42

Claim 42 was rejected as obvious based on Tomlinson in view of Rosado and further in view of Gera. Claim 42 contains the limitation of a speaker enclosed within the cushion. The Examiner has suggested that Gera teaches a chair having a telephone, which includes a base station and a headset (speaker). Gera does not teach a chair having a telephone. Gera teaches a sectional sofa having a storage space, in which items such as a telephone may be stored. Claim 42 is not directed to a storage space. Claim 42 is directed toward a speaker enclosed within the cushion. To further clarify Applicants' novelty, Applicants have amended this claim to a speaker integral with a cushion. As the Examiner has not cited a reference in the prior art that teaches, discloses or suggests a speaker integral with the cushion, the Applicants respectfully submit that a prima facie case for obviousness has not been made.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 42 is allowable and allowance is respectfully requested.

5. Claim 43

Claim 43 was rejected as obvious based on Tomlinson in view of Rosado and further in view of Gera. Claim 43 contains the limitation of the speaker of claim 42 electrically coupled to a telephone base station. The Examiner has suggested that Gera teaches a chair having a telephone, which includes a base station and a headset (speaker). Gera does not teach a chair

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having a telephone. Gera teaches a sectional sofa having a storage space, in which items such as a telephone may be stored. Claim 43 is not directed to a storage space. Claim 43 is directed toward a speaker of claim 42 electrically coupled to a telephone base station. As the Examiner has not cited a reference in the prior art that teaches, discloses or suggests a speaker integral with a cushion and electrically coupled to a telephone base station, the Applicants respectfully submit that a prima facie case for obviousness has not been made.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 43 is allowable and allowance is respectfully requested.

E. Claim 49

Independent claim 49 reads:

A massaging bed rest cushion for supporting a person in a sitting position on an upper surface of a bed, comprising:

a back portion comprising a contoured forward surface and a rear surface, the surfaces separated by a padded interior;

a plurality of massage motors enclosed between the forward and rear surfaces;

a light source mounted to the back portion for providing light for a user,

a pair of padded armrests coupled to the back portion; and

a heater enclosed within the cushion, wherein the back portion and the armrests have lower surfaces for resting on the upper surface of the bed.

(Emphasis Added)

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The Examiner preliminarily determined that Tomlinson in view of Rosado and further in view of Foster. The Applicants respectfully submit that Tomlinson in view of Rosado and further in view of Foster, fails to teach, disclose, or suggest at least the above-emphasized element of claim 49.

Specifically, Tomlinson in view of Rosado and further in view of Foster fails to at least teach, disclose, or suggest a light source mounted to the back portion. The Examiner suggests on page 3 of the Final Office Action that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to rearrange the location of Tomlinson's light source as being mounted to the back portion as taught by Rosado, since the location is a matter of design for art recognized equivalent and ***doing so would place the light in an optimum position that does not interfere with the user's movements and yet still provide good lighting for reading if desired***" (*Emphasis Added*). Neither Tomlinson nor Rosado nor Foster teach that mounting the light in the back of the bed cushion would place the light in an optimum position that does not interfere with the user's movements and yet still provides good lighting for reading if desired. The Applicants believe this teaching, disclosure or suggestion is missing from the Examiner's cited references and respectfully submit that without this teaching, disclosure, or suggestion, at least the above emphasized limitation in claim 49 is nonobvious.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 49 is allowable and allowance is respectfully requested.

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F. Claim 50

Independent claim 50 reads:

A massaging bed rest cushion for supporting a person in a sitting position on an upper surface of a bed, comprising:

a back portion comprising a contoured forward surface and a rear surface, the surfaces separated by a padded interior;

a plurality of massage motors enclosed between the forward surface and the rear surface;

a light source mounted to the back portion for providing light for a user,

a heater enclosed within the cushion;

a pair of padded armrests coupled to the back portion; and

a controller for altering the on/off status of the massage motors, wherein the back portion and the armrests have lower surfaces for resting on the upper surface of the bed.

(Emphasis Added)

The Examiner preliminarily determined that Tomlinson in view of Rosado and further in view of Foster. The Applicants respectfully submit that Tomlinson in view of Rosado and further in view of Foster, fails to teach, disclose, or suggest at least the above-emphasized element of claim 50.

Specifically, Tomlinson in view of Rosado and further in view of Foster fails to at least teach, disclose, or suggest a light source mounted to the back portion. The Examiner suggests on page 3 of the Final Office Action that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to rearrange the location of Tomlinson's light source as being mounted to the back portion as taught by Rosado, since the location is a matter of design for art

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recognized equivalent and ***doing so would place the light in an optimum position that does not interfere with the user's movements and yet still provide good lighting for reading if desired"* (Emphasis Added)**. Neither Tomlinson nor Rosado nor Foster teach, disclose, or suggest that mounting the light in the back of the bed cushion would place the light in an optimum position that does not interfere with the user's movements and yet still provides good lighting for reading if desired. The Applicants believe this teaching, disclosure or suggestion is missing from the Examiner's cited references and respectfully submit that without this teaching, disclosure, or suggestion, at least the above emphasized limitation in claim 50 is nonobvious.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 50 is allowable and allowance is respectfully requested.

G. Claim 51

Independent claim 51 reads:

A massaging bed rest cushion for supporting a person in a sitting position on an upper surface of a bed, comprising:

a back portion comprising a contoured forward surface and a rear surface, the surfaces separated by a padded interior;

a plurality of massage motors enclosed between the forward surface and the rear surface;
a light source mounted to the back portion for providing light for a user,

a controller for altering the on/off status of the massage motors;

a pair of padded armrests coupled to the back portion; and

an on/off device on the controller for altering on/off status of the light source, wherein the back portion and the armrests have lower surfaces for resting on the upper surface of the bed.

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(Emphasis Added)

The Examiner preliminarily determined that Tomlinson in view of Rosado and further in view of Foster. The Applicants respectfully submit that Tomlinson in view of Rosado and further in view of Schwaegerle, fails to teach, disclose, or suggest at least the above-emphasized element of claim 51.

Specifically, Tomlinson in view of Rosado and further in view of Schwaegerle fails to at least teach, disclose, or suggest a light source mounted to the back portion. The Examiner suggests on page 3 of the Final Office Action that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to rearrange the location of Tomlinson's light source as being mounted to the back portion as taught by Rosado, since the location is a matter of design for art recognized equivalent and **doing so would place the light in an optimum position that does not interfere with the user's movements and yet still provide good lighting for reading if desired**" (Emphasis Added). Neither Tomlinson nor Rosado nor Schwaegerle teach, disclose, or suggest that mounting the light in the back of the bed cushion would place the light in an optimum position that does not interfere with the user's movements and yet still provides good lighting for reading if desired. The Applicants believe this teaching, disclosure or suggestion is missing from the Examiner's cited references and respectfully submit that without this teaching, disclosure, or suggestion, at least the above emphasized limitation in claim 51 is nonobvious.

As a result of at least the above-mentioned, the Applicants respectfully submit that claim 51 is allowable and allowance is respectfully requested.

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II. Prior Art Made of Record

The prior art made of record has been considered, but is not believed to affect the patentability of the presently pending claims.

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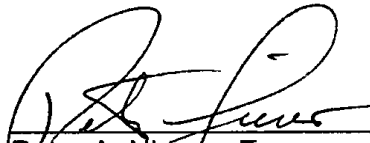
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CONCLUSION

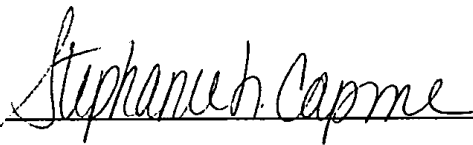
In light of the foregoing amendments and for at least the reasons set forth above, the Applicants respectfully submit that all objections and rejections have been traversed, rendered moot and/or accommodated, and that presently pending claims 1-14 and 16-51 are in condition for allowance. Favorable reconsideration and allowance of the present application and the presently pending claims are hereby courteously requested. If in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (603) 668-1400.

Respectfully submitted,


Peter A. Nieves, Esq.
Attorney for Applicant
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, P.O. Box 1450, Alexandria, VA 22313-1450 on April 26, 2004 at Manchester, New Hampshire.

By: 
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